Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Promoting Telehealth	)	WC Docket No. 17-310
In Rural America	)	

COMMENTS OF
TELEQUALITY COMMUNICATIONS, LLC

TeleQuality Communications, LLC respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking and Order seeking comment on how to strengthen the Rural Health Care (RHC) Program and improve access to telehealth in rural America.[1] TeleQuality is a telecommunications company operating in 26 states and has been actively supporting the healthcare industry for 20 years. Since the passage of the Telecommunications Act of 1996, we have exclusively focused on the needs of healthcare providers (HCPs). TeleQuality currently serves more than 800 HCP locations, nearly all of which participate in the RHC Program. Whether rural or urban, these providers require robust telecommunications and broadband capabilities in order to provide the healthcare services their communities need.

[1] *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631 (2017) (*Notice*).

Executive Summary

TeleQuality appreciates the Commission's clear commitment to improving the RHC Program. TeleQuality believes that the best way forward is for the Commission to take a market-based approach as an alternative to establishing a more complicated, heavy-handed regulatory regime for the Telecom Program.

To ensure sufficient funding and certainty for Program participants, TeleQuality encourages the Commission to raise the RHC Program cap. TeleQuality believes legitimate needs for increased broadband along with additional eligible entities have driven the Program's demand in the past few years.

TeleQuality believes that promoting competition in the rural healthcare market is the most powerful way to address potential rate manipulation. If the Commission or USAC establishes urban rates, the possibility of manipulation of the urban rates will essentially be eliminated. As for rural rates, once there is competition in rural markets, the rates will regulate themselves. To achieve this outcome, the Commission should encourage transparency, responsiveness, and accountability in the program's competitive bidding rules.

By providing the right incentives, the Commission can help the RHC Program reap the benefits of a competitive marketplace: cost-effective services as well as technology solutions that patients and healthcare providers can rely upon. Competition is driving rates down in the E-rate Program and it will do the same in the RHC Program, with focused revisions in Program rules by the Commission. A competitive market also will help protect against waste, fraud and abuse. TeleQuality believes that a light regulatory touch coupled with competition will address the issues created by the few bad actors in the RHC Program and protect the Program's integrity.

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I. THE COMMISSION SHOULD RAISE THE RHC PROGRAM CAP

TeleQuality believes that the RHC Program cap should be raised,[2] including retroactively for funding year 2017,[3] and that going forward the cap should be adjusted annually for inflation, as the E-rate Program's cap is.[4] It is in the public interest to ensure that the RHC Program funds are used appropriately. However, TeleQuality emphasizes that the pressures on the current cap are not primarily attributable to waste, fraud, and abuse. Rather, they are the result of the realities and needs of the provision of modern healthcare and the increased broadband capabilities that are required to implement essential technological advances. TeleQuality believes the Commission should not only increase the cap, but also retain undisbursed funds within the RHC Program for use in future funding years.

For the most part, TeleQuality agrees with the Commission's observations in the *Notice*, and specifically, TeleQuality wants to be able to assure its customers that they are participating in a program that is free from fraud. For that reason, TeleQuality applauds the Commission's recent enforcement actions.[5] While it is important that the Commission protect against these threats to the Fund, TeleQuality believes the Commission is already doing so effectively.[6] For

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[2] *Notice* ¶¶ 15-16.

[3] *Notice* ¶ 16.

[4] *Notice* ¶ 18 & nn. 36, 38.

[5] *See, DataConnex, LLC*, Notice of Apparent Liability for Forfeiture and Order, FCC 18-9, (January 30, 2018) (DataConnex NAL); *See also Network Services Solutions, LLC and Scott Madison*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd. 12238 (2016) and *Network Services Solutions*, Amendment to Notice of Apparent Liability and Order, 32 FCC Rcd. 5169, 5171-3 (2017) (collectively, NSS NAL).

[6] The Commission is pursuing enforcement actions as necessary. *See* DataConnex and NSS NALs. In addition, of 22 audits completed in fiscal year 2017, USAC only had one audit with an overpayment. *See* FCC Agency Financial Report, Fiscal Year 2017 at p. 79. The total amount of the overpayment was $113,000. The RHC program has had such a low error rate that the Commission is not required by the Office of Management and Budget to conduct annual checks for improper payments. *See, e.g.,* FCC Agency Financial Report, Fiscal Year 2015 at p. 85.

purposes of this rulemaking, however, it is important that the Commission understand that the main factors driving demand are a function of the technical advances in modern healthcare and the unfunded regulatory requirements for healthcare providers.

The bandwidth needs of TeleQuality's customers have increased drastically over the past few years. In 2013, the average bandwidth needed by a TeleQuality customer was 7 Mbps. Within a year, by 2014, that number had increased to 37 Mbps. And a year after that, in 2015, bandwidth needs of the average TeleQuality customer had increased almost *tenfold*, to 317 Mbps. TeleQuality's new customer contracts in funding year 2016 also show the increased demand for higher-bandwidth service: approximately 40 percent of new contracts in 2016 were for 100 Mbps or higher. As the Commission observed in the *Notice,* in the RHC Telecom Program, the number of applications has not increased, but the dollars requested has.[7] This is likely a reflection of increased broadband capacity rural HCPs are purchasing and seeking discounts for. TeleQuality believes that its own experience is typical in the industry: rural healthcare providers simply need more bandwidth to handle their day-to-day needs.

TeleQuality believes HCPs are in the first stage of their increased broadband needs. In TeleQuality's experience, the main driver of increased demand for RHC funding in recent years is the fact that robust broadband capability has become essential for any healthcare entity that must use electronic health records in the administration of their business.

For example, as part of the American Recovery and Reinvestment Act, all public and private healthcare providers and other eligible professionals (EP) were required to adopt and demonstrate "meaningful use" of electronic medical records (EMR) by January 1, 2014 in order

[7] *Notice* ¶ 10.

to maintain their existing Medicaid and Medicare reimbursement levels.[8] Both incentives and penalties were used to encourage healthcare providers to adopt electronic medical and health records.[9] And that migration to electronic health records continues to drive demand for broadband sufficient to support electronic records systems, as well as other administrative needs that all businesses face.

In addition to electronic health records, the very nature of modern healthcare is driving the increased demand for RHC funding. Improved imaging capabilities mean that healthcare facilities need to be able to send and receive much larger data files. High-definition MRI and CAT scan images, for example, require sufficient bandwidth to transfer multi-gigabyte files. Devices such as wireless EKGs and blood pressure cuffs, as well as immediate access to X-rays and other health records on wireless devices, use WiFi.[10] Increased wireless connectivity also, of course, improves the ability of patients and their families to stay in touch with each other and with their healthcare providers, and patients and families have increasingly come to rely on the presence of robust WiFi in hospitals and other healthcare facilities. All of these factors drive demand for broadband.

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[8] *American Recovery and Reinvestment Act of 2009*, Pub. L. No. 111-5 (codified in scattered sections of the U.S. Code). "Meaningful use" of electronic health records (EHR), as defined by HealthIT.gov, consists of using digital medical and health records to achieve the following: (1) improve quality, safety, efficiency, and reduce health disparities; (2) engage patients and family; (3) improve care coordination, and population and public health; and (4) maintain privacy and security of patient health information. https://www.healthit.gov/providers-professionals/meaningful-use-definition-objectives.

[9] For example, some healthcare providers who didn't implement EMR/EHR systems and demonstrate their meaningful use by 2015 experienced a 1% reduction in Medicare reimbursements.

[10] *How Broadband Connectivity Impacts Health Care*, Frontier Business Edge White Paper, *available at* https://business.frontier.com/wp-content/uploads/24639/How-Broadband-Connectivity-Impacts-Health-Care-White-Paper.pdf

In addition to increased broadband needs of rural healthcare providers, the Commission in 2012 made urban healthcare facilities eligible for funding as part of the Healthcare Connect Fund (HCF) Program.[11] Given all of these changes, it is no wonder that the demand for funding has exceeded the cap in the past several years.

Investment in the RHC Program is a wise course of action for the country. Costs for healthcare and related expenses can be significantly reduced when patients are able to receive the best available care without leaving their communities.[12] Telemedicine technologies can allow rural HCPs to provide care without additional clinic or hospital visits.[13] Telemedicine can save patients time off work and travel expenses. These savings should be taken into account when considering the increase in the cap. A holistic view of the costs and benefits of the RHC Program to the American people should factor into the Commission's decision-making process.

The Commission also sought comment on how to treat unused committed funds.[14] TeleQuality recommends that committed funding be treated as it is in the E-rate Program: any unused committed funding should be carried forward for use in any subsequent funding year. This way, as demand increases, the small percentage of funds that remain unused will carry forward to the following year, and will likely be used by healthcare providers in the subsequent funding year.

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[11] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16699 ¶ 45 (2012) (*HCF Order*). Congress added skilled nursing facilities to the list of HCPs eligible for the RHC Program in 2017, but it is unclear how many of those entities may have applied for funding in 2017. *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Memorandum Opinion and Order, 32 FCC Rcd 5260 (2017) (implementing the Rural Health Care Connectivity Act of 2016).

[12] *Id.* at 16691-92 ¶¶ 26-27.

[13] *Id.* at 16688-89 ¶ 21.

[14] *Notice* ¶ 19.

TeleQuality does not have a recommendation at this time regarding the specific dollar amount by which the cap should be raised but looks forward to seeing the proposals of other commenters. The Commission is obligated to do what is necessary to achieve the goals for the RHC Program that Congress identified in the Telecommunications Act of 1996.[15] When it comes to broadband connectivity, healthcare providers have lagged behind other anchor institutions, and they are only recently starting to catch up. It is essential that the RHC Program be expanded to support HCPs' efforts to take advantage of broadband and telemedicine, or rural Americans will not have the benefit of today's technologies that can provide access to the best possible healthcare delivered at a reasonable cost.

II. IF DEMAND EXCEEDS THE CAP, THE COMMISSION SHOULD CONSIDER ESTABLISHING PRIORITY BY PROGRAM, NOT BY THE RURAL STATUS OF THE HEALTHCARE PROVIDER.

The Commission requests comment on how to prioritize funding requests when the demand for program funding exceeds the cap.[16] TeleQuality hopes that the Commission will raise the cap, making this issue a moot point. In case the Commission chooses not to raise the cap, or at some point demand again exceeds the cap, TeleQuality offers its thoughts below.

First, timely, predictable funding commitments should be paramount in the Commission's consideration of this issue, as predictability and certainty are USF statutory principles.[17] The Commission's primary administrative goal should be to avoid situations like what happened in the current funding year, 2017, where applicants have so far waited eight months for a commitment. Some carriers are unconcerned about these delays because they

[15] 47 U.S.C. § 254(h)(1)(A).

[16] *Notice* ¶¶ 21-34.

[17] 47 U.S.C. § 254(b)(5).

require HCPs to pay the entire amount of the bill prior to receiving a commitment from the Program. But TeleQuality believes that we are partners with HCPs, and we offer the option for our customers to pay only their share of the price while waiting for their commitments. It is thus important to TeleQuality that funding commitment delays be avoided.

Prorating should be a last resort for the Commission because it provides zero certainty to Program participants. Each year, HCPs and their service providers would have no idea of the amount of funding the HCP will receive, and the amount would likely change from year to year. If the demand exceeds the cap, the Commission should establish more granular categories of funding, and prioritize some of those categories. That way, only some categories of funding will face proration. With that approach, not every applicant's funding will be delayed until USAC has reviewed every single application. For example, the Commission could create three buckets of funding: Telecom Program, HCF rural, and HCF urban. Such an approach would be similar to how priority 1 and priority 2 funding were committed in the E-rate Program prior to the Modernization Orders in 2014.[18] As long as the demand for priority 1 funding did not exceed the cap, USAC was able to proceed with funding commitments. This is not ideal, but it would be better than prorating funding for the entire applicant pool several months after the funding year begins. If the Commission prioritizes by program, it should give priority to the Telecom Program because it is statutorily mandated.[19]

[18] *See, e.g.,Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8877 ¶ 15 (2014).

[19] Unlike the HCF Program, the Commission established the Telecom Program in 1997 to implement Congress's directive in section 254(h)(1)(A) of the 1996 Telecommunications Act to subsidize the difference between urban and rural rates for telecommunications services. 47 U.S.C. § 254(h)(1)(A); *see also Notice* ¶ 6. The HCF Program, while authorized by Congress, was not directly mandated by Congress.

Another option, at least in the short term, is that the Commission could prioritize by contractual arrangements and give preference to HCPs with multiyear contracts. As has been the industry practice for decades, with multiyear, or "evergreen," contracts, the service provider has often partially determined its rates by amortizing its upfront costs over the life of the contract. Because of those economic expectations, those HCPs should be funded first, at 100 percent, before USAC moves on to the next category. It is also likely that those contracts may provide the best value, as HCPs can obtain better pricing with longer-term commitments.

TeleQuality does not favor using rural categories to prioritize funding requests.[20] The degree of rurality may not reflect the gap between urban and rural costs and pricing, availability of facilities, or the level of competition. As such, TeleQuality believes it is a poor proxy for the neediest HCPs.

III. THE COMMISSION SHOULD ALLOW MARKET FORCES TO DRIVE RATES DOWN INSTEAD OF ADOPTING A SUBJECTIVE, REGULATORY APPROACH

TeleQuality understands the Commission's concern that Telecom Program participants do not have enough "skin in the game" to incentivize them to carefully consider price when selecting a service provider.[21] Congress, however, identified what "skin in the game" rural HCPs should have: the amount equal to the urban rate.[22] Therefore, as Congress designed, the skin in the game for rural HCPs might be very low for some applicants with higher rural pricing, at least as a percentage when compared to the urban rate. This is not the fault of the rural HCPs, nor a cause for alarm in the Program.

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[20] *Notice* ¶¶ 24-30.

[21] *Notice* ¶ 13.

[22] 47 U.S.C. § 254(h)(1)(A).

TeleQuality believes that the Commission's ultimate goal is to see lower rates for broadband. The *Notice* implies that requiring HCPs to pay more of their own money for these services would help achieve this goal. But that is simply one way to possibly achieve lower rates; letting market forces operate will achieve the same goal more effectively, more efficiently, and with fewer Universal Service Program resources.

Instead of adopting subjective, time-consuming processes, TeleQuality recommends that the Commission instead use market-based mechanisms wherever possible to encourage HCPs to be price sensitive, as further described below. Empowering multiple methods of bandwidth delivery and other competition-attracting measures similar to the E-rate Program should have dramatic effects on the cost of service per Megabit, which is ultimately what the Commission wants to affect in this *Notice*.[23] TeleQuality also believes that competition will help limit the waste, fraud and abuse that the Commission has identified.

TeleQuality is concerned that, contrary to the Commission's goals, the subjective, regulatory proposals contained in the *Notice* will not result in lower pricing, but will instead (1) significantly increase the applicant, service provider and Program administrative costs; (2) discourage competition; (3) delay funding commitments; (4) subsequently drive participants out of the Program; and (5) create a situation where consultants and lawyers are the primary beneficiaries of the new rules.[24]

Most importantly, these proposals will not provide the certainty or predictability that USF statutory principles require. And they may hinder the Program's sufficiency, depending upon

[23] Controlling the cost per unit—Megabits per second—may not reduce the total demand for funds as the need for additional bandwidth grows due to the healthcare needs as described earlier.

[24] TeleQuality believes that participants that leave the RHC Program do so primarily for one of two reasons: (1) the Program is too difficult to navigate; and (2) they do not receive enough funding to make it worth their time and effort.

how the benchmarks and reviews are implemented for a given HCP. Furthermore, the more complex the Program is, the less predictable it is for applicants, as there are more opportunities for applicants to make simple mistakes that jeopardize their funding. If service providers likewise have to jump through more hoops, they are less likely to bid on potential contracts, thereby decreasing HCP options and eliminating any possibility of the benefits of a competitive marketplace.

The *Notice* seeks comment on proposals designed to "reduce opportunities for manipulating rates."[25] TeleQuality believes that promoting competition in the rural healthcare market is the most powerful way to address potential rate manipulation. If the Commission or USAC establishes urban rates, the possibility of manipulation of the urban rates will essentially be eliminated. As for rural rates, once there is competition in rural markets, the rates will regulate themselves. To achieve this outcome, the Commission should encourage transparency in the RHC bidding process. Potential competitors should be allowed—as they are in the E-rate Program—to easily search for submitted applications, and HCPs should be required—as they are in the E-rate Program—to respond to all bona fide vendor questions and proposals.

A. Benchmarks and Enhanced Reviews for "Outlier" Discount Rates Unfairly Penalize the Very Areas USF Should be Supporting

TeleQuality is concerned that the Commission's proposal to establish benchmarks—in which a rural HCP's discount rates are compared to other applicants' discount rates—will reduce rather than enhance HCPs' ability to access necessary broadband services. The benchmark proposal dismisses the statutory directive that rural HCPs have access to rates that are reasonably comparable to rates charged to urban HCPs.

[25] *Notice* ¶ 60.

TeleQuality is troubled that the Commission seems to imply that rates charged to HCPs with the highest discount rates would be presumed to be unreasonable.[26] That position unfairly penalizes HCPs in locations that are extremely difficult to serve with the bandwidth they need—the very entities that universal service was designed to support. TeleQuality disagrees in principle with such a presumption.

Further, there is no evidence that high discount rates are wasteful or not reflective of actual costs. In fact, it is likely that these are the very rural HCPs that need USF support the most. These HCPs may be located in areas where the Commission might be surprised to find a lack of sufficient facilities or robust competition but are nevertheless in the most expensive and difficult areas to serve. The vast majority of these high-cost areas will become less expensive to serve as build-out continues throughout the United States.

TeleQuality believes the Commission should use the competitive marketplace to help provide a check on outlier pricing. If multiple vendors bid on the request for services, the Commission should establish a rebuttable presumption that the rural rate is correct, and USAC should defer to the local competitive bidding process, absent evidence of fraud.

The Commission's proposals in paragraphs 43-46 of the *Notice* are intended to have the effect of lowering the highest discounts as rural HCPs try to avoid the additional review a higher discount rate would entail.[27] If a rural HCP's rate is significantly higher than its urban rate, on a percentage basis, what will happen is one of two things: either the HCP will have to pay more than the statute requires, or it will be subjected to substantial additional scrutiny. HCPs may not be able to afford either of those options and will instead leave the Program. Given the financial

[26] *Notice* ¶ 43.

[27] *Notice* ¶¶ 43-46.

pressures facing rural HCPs, this may ultimately lead to the closure of more rural HCPs. Regulation of the discount rate therefore seems to be contrary to the goals Congress established for the Telecom Program.

Enhanced reviews of the type suggested in the *Notice* also likely would lead to denials of funding requests for the neediest HCPs.[28] The Commission need only look to USAC's current treatment of special construction projects in the E-rate Program to see the real-world effects of this type of enhanced review. USAC is reviewing special construction charges and finding that some are not cost-effective without explaining why to applicants, basing its decisions on some undefined and undisclosed "industry standard." It is likely any RHC rate reviews will suffer from the same problem. USAC will likely believe—even if the Commission declines to adopt this as a presumption—that high discount rates indicate rural prices that are "too high" and will find a way to deny those applications.

If the Commission pursues an "enhanced review" approach despite these concerns, it should set clear standards for USAC to follow. The standards should be transparent, so HCPs are not guessing as to how their applications will be judged, and any denial or reduction of funding should be accompanied by a thorough explanation. The benchmark should include a specific dollar component. If the dollar amount is below a certain threshold, then there should be no enhanced reviews.

TeleQuality likewise disagrees with capping support at a benchmark. Again, it would have the effect of lowering the rate of the neediest HCPs. This approach also ignores the fact that many of these HCPs face unique challenges of geography, scope and scale that are not easily comparable to other entities. And contrary to the Commission's statement that the annual

[28] *Notice* ¶¶ 42-59.

establishment of tiers comparing service providers would provide certainty, we believe such a proposal would have the opposite effect. Establishing rate tiers each year and grouping HCPs based on entity size, location, and services seems like a recipe for endless disputes over both the benchmarks and the classification factors. It is unreasonable to expect that USAC—or even the Commission—could create and apply all of those identified factors in a fair and equitable manner. Further, regardless of entity size, all HCPs need extensive bandwidth to operate electronic health records. TeleQuality reminds the Commission of the dispute when the Commission changed the definition of "rural" in 2004.[29] That dispute had an easy fix—the Commission simply grandfathered the HCPs whose classifications were changed.[30] With this proposal, no such easy fix would be available.

B. The Rural and Urban Rate Mechanisms Are Outdated, But the Commission's Proposals Fail to Account for Market Realities

The Commission is correct that it is time to update the way HCPs and carriers document urban and rural rates. But the Commission's proposal to have USAC establish urban and rural rates suffers from many of the flaws as the enhanced reviews discussed above.

Urban rates should be fairly easy for the Commission to establish. While tariffed rates are now not readily available for many eligible services, the Commission could use rates charged to E-rate recipients to determine an urban rate. USAC would need to update these rates on a regular basis so that they would be available, transparent, and useful for HCPs and service

[29] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24580 (2004).

[30] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order on Reconsideration, 23 FCC Rcd 2539 (2008).

providers alike.[31] TeleQuality would recommend a process similar to the Eligible Services List in the E-rate Program. Each year, USAC provides draft rates, and commenters have an opportunity to provide feedback to the Commission before final rates are established. In addition, as the *Notice* explained, the tiers for "similar services" are woefully outdated.[32] The new service categories should include higher and more categories of bandwidth speeds.

For rural rates, however, the challenge is much greater. As an initial matter, as noted in the enhanced review section above, if multiple vendors bid on the request for services, the Commission should establish a rebuttable presumption that the rural rate is correct, and USAC should defer to the local competitive bidding process, absent evidence of fraud. For applications with only one bidder, the documentation that the Commission seems to think is readily available simply does not exist. Some services are not regulated by the state at all, and therefore public pricing is not easily obtainable.

As with benchmarks, directing USAC to establish rural rates is fraught with pitfalls. Rates are dependent upon geography, topology and density, so averaging does not typically work for rural areas. Again, it is easy to anticipate the disputes that would arise and the lengthy processes necessary to resolve those disputes. Rather than improving the Program, such rural rate regulation would make things far more difficult for applicants, which would undermine the statutory goals of the RHC Program.

If USAC did establish rates that were not reflective of market realities, carriers would likely stop offering RHC-supported services to HCPs, reducing their choices, or worse,

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[31] *Notice* ¶ 69.

[32] *Notice* ¶¶ 73-78.

eliminating their options for broadband altogether.[33] USAC would be free to second-guess every rural rate offered by service providers. HCPs also would have no idea what their rates would be until months after they request funding. If HCPs were then free to pay only their share (i.e., the urban rate), instead of the amount they had contracted for, HCPs would be no more price sensitive than they are today, and the service provider will be left to endure the reduction. Potential service providers would be reluctant to bid if they knew the pricing they offered may not end up the actual rate for which they will be reimbursed. HCPs that need facilities installed would pose an even greater risk for service providers. Typically, a service provider will spread out upfront charges for facilities construction over the life of the contract. If a service provider's rate may be lowered at USAC's discretion, however, service providers may not take that risk, leaving HCPs that need new or upgraded facilities without any options for greater bandwidth.

For those reasons, current evergreen contracts should not be subject to future rate resets or retroactive reviews; any such requirement would jeopardize the predictability and affordability that make multiyear contracts appealing to HCPs. Such a requirement would undermine efforts to promote competition in the RHC marketplace by discouraging vendors from entering into multiyear contracts, and possibly from participating in the RHC Program altogether.

As discussed in greater detail below, TeleQuality believes the Commission can encourage competition and let the market address these issues without establishing a complicated, subjective process that would delay commitments. We hope the Commission will strongly

[33] In the E-rate context, the Commission required high-cost carriers to bid on E-rate RFPs. *See Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15562, ¶ 60. (2014) (*Second Modernization Order*).

consider market-based alternatives. If the Commission nevertheless pursues rate regulation, it must set clear standards for USAC to follow. HCPs must not be left to guess how their applications will be judged. There should be a clear, expedited process to follow in the cases where the service provider does not agree with the cost analysis.[34]

C. Reliance on Market Forces Is a Better Approach

Instead of adding to the Telecom Program's complexity, the Commission should take a market-based approach. TeleQuality acknowledges that competition might not solve every particular issue, but believes it is worthwhile to try such an approach before creating the intricate review process envisioned in the *Notice*. The Telecom Program has not been significantly revised since 1997, and TeleQuality believes it is better to try a competition-based approach before jumping into significant regulation.

Schools and libraries have benefitted from competitive bidding in the E-rate Program. One study found that Indiana schools have increased their Internet access by 4,000 percent while reducing the price per Mbps by more than 90 percent.[35] A report by EducationSuperHighway found that bandwidth costs have dropped from $22 per Mbps in 2013 to $7 per Mbps in 2016 for E-rate program participants.[36] The same report found that of the school districts that upgraded their bandwidth, they received, on average, three times their previous bandwidth for only a seven

[34] Currently, if USF recipients want to appeal a decision of USAC, they have to appeal to USAC first. The Commission should allow HCPs and service providers to appeal directly to the FCC so additional months are not wasted. Alternatively, the Commission should establish a 30-day deadline by which USAC must issue an appeal decision. Such a decision should apply to all USF appeals.

[35] *State K-12 Leadership: Driving Connectivity and Access*, SEDTA and Common Sense Kids Action, April 2016, http://www.setda.org/wp-content/uploads/2016/04/Broadband_2016.4.11.16_updated.pdf.

[36] *2016 State of the States*, EducationSuperhighway, January 2017 at 8, https://s3-us-west-1.amazonaws.com/esh-sots-pdfs/2016_national_report_K12_broadband.pdf.

percent increase in cost.[37] Nearly 40 percent of those districts were able to upgrade while lowering or maintaining their monthly cost for Internet access.[38] TeleQuality believes that competition can bring the same benefits to the RHC Program.

We agree that the Commission should strive to protect the Program from waste, fraud and abuse. TeleQuality believes that some of the issues identified by the Commission would be remedied with more robust competition. Where multiple carriers are vying for the right to provide services, they will see if the winning bidder's pricing significantly exceeds their own.[39] Participants in the E-rate Program know that not only is USAC reviewing the applications, but losing vendors are as well. Had the bad actions of NSS and DataConnex occurred in the E-rate Program, they likely would have been spotted by competitors, who would have complained to the applicants and to USAC. While sometimes those complaints are without merit as the carrier may just be upset over not winning the bid, this self-policing likely is a significant deterrent to waste, fraud and abuse in the E-rate Program.

In the event the Commission decides that it must adopt a system to increase the share that HCPs pay, then a solution could be discount rate tiers. The E-rate Program serves as a good model here. The Commission could use a tiered discount structure, comparable to the E-rate discount matrix, based on the degree of rurality, poverty, or another objective measure. The neediest HCPs could receive a percentage discount that would decrease over time. The tiers could decrease 5 percent at each additional level (95 percent, 90 percent, etc.). This would force more price sensitivity by HCPs without second-guessing the rate structure after a contract is

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[37] *Id.* at 7.

[38] *Id.*

[39] If the Commission makes RHC data more transparent, like it is in the E-rate program, that will also assist carriers and HCPs in ferreting out abuse.

already signed. This approach would require HCPs to contribute more of their own dollars up front but would provide more certainty for Program participants.

IV. THE COMMISSION SHOULD NOT REQUIRE THAT APPLICANTS SELECT THE CHEAPEST PROVIDER, BUT ADDITIONAL GUIDANCE ON COMPETITIVE BIDDING WOULD BE WELCOME

As noted above, TeleQuality believes competition is a better approach to reduce rates than the unpredictable and burdensome enhanced reviews. TeleQuality is eager to compete with other carriers based on the value it provides rural HCPs. In responding to the Commission's request for comment on how to define cost-effectiveness for purposes of the RHC Program,[40] TeleQuality urges the Commission to keep in mind that the price of service, while obviously a crucial factor, should not be the *only* factor that HCPs are allowed to consider when choosing services. HCPs must be allowed to make the best possible choices to ensure quality service for their patients, and an exclusive focus on pricing would prevent them from doing so. TeleQuality also would welcome additional guidance on the competitive bidding process.

Currently, HCPs must choose the most cost-effective service provider, which is defined by the Commission as "the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors relevant to choosing a method of providing the required services."[41] USAC advises applicants to develop a list of criteria and assign points to each factor, which should total 100 points.[42] After evaluating potential service providers on these factors, USAC notes that the applicants should then select the lowest-cost method of

[40] *Notice* ¶¶ 82-84.

[41] *See* 47 C.F.R. § 54.615(c)(7); *Notice* ¶ 82.

[42] http://www.usac.org/rhc/telecommunications/health-care-providers/step02/default.aspx.

providing the service.[43] In the *Notice*, the Commission proposed a requirement that HCPs must select the cheapest provider.[44]

Broadband is not simply an interchangeable commodity that can be bought from any seller. Carriers and ISPs may cut corners, just like service providers in any industry, and when they do so, it can affect reliability. Reliability and quality of service are important to all telecom and broadband customers: this is clear from wireless carrier ads that tout the dependability of their networks. Electronic health records drive the business of healthcare; HCPs lose money every time they are unable to access electronic health records, and many rural HCPs are already financially at risk.[45] Reliability and quality of service are infinitely more crucial to HCPs, for whom network outages can be a matter of life and death.

TeleQuality understands the Commission's goal of ensuring HCPs take price into consideration when deciding on a service provider. However, instead of requiring HCPs to select the least expensive bidder, TeleQuality recommends the Commission adopt a specific standard for considering price: a requirement that price be the primary factor considered, as is the case in the E-rate competitive bidding rules. But the Commission must not make price the *only* factor to be considered, either formally or in effect, because HCPs must be allowed to take quality of service and reliability into account as well.

TeleQuality also notes that the Commission's proposed definition of cost-effectiveness would allow HCPs to set minimum qualification factors for "products and services that are

[43] *Id.*

[44] *Notice* ¶ 84.

[45] The increased reliance on distributed computing and cloud computing make reliability even more important. Those systems often are less expensive but more reliant on robust connections.

essential to satisfy the communication needs of the applicant."[46] TeleQuality believes that this standard would place additional burdens on HCPs. First, in order to take quality and other factors into account, all HCPs would be required to detail their specific criteria in advance of issuing a request for proposals. That would increase the work involved for all HCPs, even those that typically cannot get more than one service provider to submit bids. Second, TeleQuality is concerned that the phrase "essential to satisfy the communication needs of the applicant" would establish another standard for HCPs to demonstrate to USAC: whether the services they were purchasing were truly "essential." HCPs are in the best position to make that determination, and, if USAC were to undertake this type of review, it would add significant costs to the Program, for both USAC and applicants. In addition, it would likely delay the issuance of commitments.

TeleQuality opposes any new rules that would require all HCPs to issue requests for proposals,[47] simply because many HCPs in the Telecom Program do not issue RFPs at all, but rather solicit bids via the FCC Form 465. TeleQuality believes that a requirement that HCPs include a bandwidth range in their bid solicitation would suffice.

V. THE COMMISSION SHOULD STREAMLINE THE APPLICATION PROCESS INSTEAD OF MAKING IT MORE COMPLICATED

In addition to improving the competitive bidding process, the Commission should work to streamline the application process and require USAC to issue commitments in a timely fashion. Collecting additional information with either the RFP or application process is contrary to those goals.[48] There is no point in collecting additional information unless USAC is reviewing it, but requiring USAC to add this additional, unnecessary review would simply lengthen the

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[46] *Notice* ¶ 84.

[47] *Notice* ¶ 84.

[48] *Notice* ¶¶ 102, 103.

review process and increase costs for both USAC and HCPs. TeleQuality believes that USAC should continue requesting additional documentation only when it is necessary. In fact, it is likely that the onerous up-front documentation requirements in the HCF Program are at least partially responsible for the HCF Program's lower-than-expected participation rates. As more HCPs have learned about the RHC Program, they are more likely to elect to participate in the Telecom Program over HCF because of HCF's administrative requirements, unless they are only eligible for funding under HCF. RHC's regular review process has worked for the past 20 years, and there does not seem to be sufficient evidence to require such a drastic change.

TeleQuality believes that the filing window process established by the Wireline Competition Bureau and USAC is acceptable, but HCPs should be allowed to seek bids earlier than January 1 of a funding year so the bidding process timeframe is not so short.[49] As noted above, timely commitments should be one of the Program's primary goals.

Finally, the Commission should not require USAC to approve evergreen contracts. The E-rate Program funds multiyear contracts with no requirement that USAC approve them, and to TeleQuality's knowledge neither USAC nor the Commission has identified any downside to that approach. If USAC continues to approve evergreen contracts, those applications should be on a "fast track" in subsequent funding years.

VI. PROPOSED CHANGES TO THE COMPETITIVE BIDDING PROCESS SHOULD FOSTER GREATER COMPETITION

TeleQuality strongly supports the Commission's efforts to improve oversight of the RHC Program. TeleQuality agrees that the Commission should codify USAC's procedures requiring that consultants be subject to the same restrictions as service providers when it comes to assisting

[49] *Notice* ¶¶ 105, 106.

and developing the Forms 461 or 465 and evaluating the bids.[50] TeleQuality believes, however, that the Commission's proposed rule requiring applicants to identify "any consultants, service providers, or any other outside experts who aided in the preparation of their applications" may be too broad. It appears the Commission intends that rule to apply only to the Forms 461 and 465 and any associated RFPs. If that is the case, TeleQuality recommends that the rule specify that the requirement applies only to those forms, and not all application forms. TeleQuality believes expanding that requirement to the Forms 462 and 466 would unnecessarily burden applicants with no resulting benefit. Requiring service providers to indicate how they identified the HCP bidding opportunity seems unnecessary as well. It is TeleQuality's belief that HCPs should encourage service providers to bid, and the Commission should encourage any efforts HCPs make to request vendors to bid, above and beyond the publicly available forms that any service provider has access to.

TeleQuality also agrees with the Commission's proposal to adopt the gift rules applicable to E-rate participants.[51] The E-rate rules seem to be generally understandable to Program participants, and should suffice without additional restrictions specific to the RHC Program.

In addition, the Commission seeks comment regarding whether the "fair and open" standard should be adopted for the Telecom Program and whether the competitive bidding exemptions that apply in the HCF Program should also apply for the Telecom Program.[52] TeleQuality believes they should. Furthermore, TeleQuality believes the Commission should make clear that "fair and open" means that HCPs must respond to questions about the HCP's

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[50] *Notice* ¶ 88.

[51] *Notice* ¶¶ 89-93.

[52] *Notice* ¶¶ 100, 101.

service needs from all potential bidders. That is not happening today. For example, in the current procurement period for funding year 2018, TeleQuality has contacted 45 HCPs that do not have consultants. Of those, 35 entities did not respond to TeleQuality's requests for more information regarding the services sought by the HCP. Of the 10 that did respond, five asked TeleQuality not to contact them in the future. If HCPs and their consultants were required to respond to vendor's requests for additional information, there would be more competition in the Program, which in turn should ensure pricing is set at a competitive rate.

The *Notice* seeks comment on whether the role of consultants in RHC funding applications should be subject to heightened scrutiny or constraints, to reduce the possibility of waste, fraud, and abuse.[53] Many HCPs rely upon the expertise of consultants for the administration of paperwork and to ensure compliance with program rules. However, too often HCPs are not aware of the importance of having a partnership with their consultants, instead of completely relying on them.[54] TeleQuality believes that additional limits on HCPs' ability to outsource aspects of the application process could help ensure that HCPs have sufficient skin in the game. Specifically, TeleQuality recommends that the Commission consider requiring the applicant itself to sign the FCC Form 466, rather than allowing a consultant to sign it. The Commission might also consider adding certification requirements for the HCP itself, such as a declaration by the HCP applicant that it has evaluated all bids and ensured an open and fair competitive bidding process. This kind of skin in the game will help the Commission ensure that the HCP is sufficiently vested in the competitive bidding process.

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[53] *Notice* ¶¶ 87-88.

[54] *See, e.g.*, DataConnex NAL at ¶ 51.

VII. CONCLUSION

TeleQuality strongly supports the goals of the RHC Program and believes that the recommendations discussed herein would make the Program even more successful. TeleQuality appreciates the opportunity to comment on this matter and is available to answer any questions the Commission may have.

Respectfully submitted,

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